years' imprisonment, with eligibility for parole at such time as the Board of Parole may determine (18 U.S.C. 4208(a)(2)). The court of appeals affirmed *per curiam* (App. D in Pet. No. 71-871).

Petitioners now seek to attack their convictions on grounds not urged in the court of appeals. This in itself is a basis for denying the petitions since "[o]nly in exceptional cases will this Court review a question not raised in the court below." *Lawn* v. *United States*, 355 U.S. 339, 362 n. 16. See also *Adickes* v. *S. H. Kress & Co.*, 398 U.S. 144, 147 n. 2. In any event, petitioners raise no issue warranting review by this Court.

1. Citing *Rewis* v. *United States*, 401 U.S. 808, petitioners argue that their offenses were local, not connected with organized crime, and that they should have been prosecuted in a state court. It has long been established that Congress may close the channels of interstate commerce to activities violating the laws of a state. See *United States* v. *Nardello*, 393 U.S. 286. While 18 U.S.C. 1952 is aimed primarily at organized crime, obviously this is not the sole objective of that statute. *Marshall* v. *United States*, 355 F.2d 999, 1002 (C.A. 9), certiorari denied, 385 U.S. 815.

In 18 U.S.C. 1952, Congress first defined unlawful activity to include those activities characteristically pursued by organized crime—"business enterprises." 18 U.S.C. 1952(b)(4). However, the statute also provides an alternative definition of unlawful activity, framed in the disjunctive, and not limited to "business enterprises," namely "extortion, bribery or arson" in

violation of state law, 18 U.S.C. 1952(b)(2). Congress rejected an amendment requiring that the acts of bribery and extortion be connected with gambling, liquor, narcotics or prostitution offenses, activities with which organized crime is commonly connected. *United States* v. *Nardello*, 393 U.S. at 291–292. Accordingly, prosecutions under the Travel Act for activities similar to those charged in this case have been consistently sustained. See *United States* v. *DeSapio*, 435 F.2d 272 (C.A. 2), certiorari denied, 402 U.S. 999; *United States* v. *Wechsler*, 392 F.2d 344 (C.A. 4), certiorari denied, 392 U.S. 932; *United States* v. *Zirpolo*, 288 F.Supp. 993 (D. N.J.), reversed on other grounds, 450 F.2d 424 (C.A. 3); *United States* v. *Corallo*, 281 F.Supp. 24 (S.D. N.Y.).

2. Since a federal offense is involved here the trial was not governed by rule prevailing in the New York courts regarding the weight to be accorded accomplice testimony, as petitioners contend. The judge charged the jury that such testimony "is to be received with caution and weighed with great care" (R. 594). Petitioners did not object to the instruction at trial (R. 600).

3. During deliberations, the jury sent a note to the court asking whether someone could tell them if "the Republican Committee needed an unanimous vote in financial matters in order to present the matter to the entire body of the Legislature" (R. 605). Judge Hen-

One member of each architectural firm testified to Walker's reports to them and their arrangements to make the money available to Walker (R. 208–227, 250–270). While Walker alone testified to handing the money to petitioners, his testimony could hardly be described as standing alone.

derson told the foreman that there was no proof on this question and that the case could not be reopened to supply the answer (R. 608–609). The judge informed counsel of the question, told them his intended response and on three occasions defense counsel agreed that the trial judge's response was proper (R. 605, 606, 607).

Petitioners now argue that if the jurors had been allowed to know that a unanimous vote was not required, they might very well have acquitted petitioners completely. However, the defense failed to elicit any proof regarding the voting procedure, and petitioners repeatedly agreed that the judge's response was proper.

Moreover, while it is true that if a unanimous vote were required in the committee petitioners were conceivably in a stronger position to command a bribe, what the donors of bribe money sought was "support" from petitioners (R. 214). Petitioners were members of the so-called Stadium Committee that, on January 30, 1970, reported out a resolution[1] allocating nine hundred thousand dollars from a Stadium bond account for architectural fees to be paid to a joint venture made up of a Buffalo-based architectural firm and a similar firm in Houston. Both firms had, prior to January 30, 1970, agreed to contribute jointly to the bribe money paid to petitioners and had begun making payments (R. 41–44, 212, 219).

[1] The committee approved presentation of the resolution to the full body of legislators by a voice vote, there were no objections or debate (R. 323, 420–421).

For the reasons stated, it is respectfully submitted that the petitions for writs of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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Supreme Court, U. S.
FILED
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71-871

IN THE

Supreme Court of the United States

October Term, 1971

No. 871

FREDERICK PORDUM,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENTAL STATEMENT OF FREDERICK PORDUM, PETITIONER

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Respondent states at Page 2 of his Memorandum that our argument that the offenses were local, and should have been prosecuted in a state court were urged in the Court of Appeals. This is not so (Point V, App. E, p. 28a in Pet. No. 71-871).

Respondent further states (p. 3, ftn. 2) that Walker's testimony (the sole incriminating witness herein) "could hardly be described as standing alone". That categorization does not alter the fact that Walker's testimony does

stand alone as far as anything incriminating concerning the petitioner Frederick Pordum.

Respectfully submitted,

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